

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

GUSTAVE KINLER,
Appellant,

v.

GENERAL SERVICES ADMINISTRATION,
Agency.

DOCKET NUMBER
DA34438910389

DATE: MAR 13 1990

Gustave Kinler, Arlington, Texas, pro se.

Kathy S. Wyche, Fort Worth, Texas, for the agency.

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman

OPINION AND ORDER

The appellant has petitioned for review of an initial decision, issued June 20, 1989, that dismissed his appeal for lack of jurisdiction. For the reasons discussed below, we find that the petition does not meet the criteria for review set forth at 5 C.F.R. § 1201.115, and we therefore DENY it. We REOPEN this case on our own motion under 5 C.F.R. § 1201.117, however, AFFIRM the initial decision as MODIFIED by this Opinion and Order, and DISMISS the appeal.

This appeal concerns the appellant's entitlement under 5 C.F.R. Part 353 to priority consideration for a job vacancy

following his alleged recovery from a work-related illness, and his related claims of unlawful age and handicap discrimination. The appellant has previously asserted the identical claims in another appeal to the Board.* Upon review of an initial decision dismissing the prior appeal for lack of jurisdiction, we remanded the case to the regional office for further adjudication. *Kinler v. General Services Administration*, MSPB Docket No. DA03538810633 (Jan. 22, 1990).

Courts have recognized their inherent authority, in the interests of judicial efficiency, to dismiss an action because of the pendency of a prior action, so long as an identity of issues exists and the controlling issues in the dismissed action will be determined in the other lawsuit. See 5 C. Wright & A. Miller, Federal Practice & Procedure § 1360, at 640 (1969). We find this principle applicable here, since the identical restoration and discrimination claims being asserted in the present appeal will have been fully resolved by the earlier filed appeal.

ORDER

This is the Board's final order in this appeal. See 5 C.F.R. § 1201.113(c).

* The only apparent difference between the two appeals is the agency decision precipitating them. The prior appeal followed the agency's proposed decision on the appellant's claim of unlawful age and handicap discrimination. This appeal followed the agency's final decision on the same claim.

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Washington, D.C.

Matthew Shannon
for Robert E. Taylor
Clerk of the Board